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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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99/554,772 05/16/00 PETIT

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HM12/0703

EXAMINER

GHASHGHAEF, F

ART UNIT

PAPER NUMBER

1656

DATE MAILED:

07/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/554,772

Applicant(s)

PETIT ET AL.

Examiner

Fariba Ghashghaee

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3-6, & 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agouridas (US Pat. 5,747,467), and Shore et al.(US Pat. 5,424,187).

Agouridas discloses the ketolide compositions and their pharmaceutical preparation and medicaments wherein the ketolide compositions and its derivatives have the same structural functionality and substitutes as the claimed compounds(See Abstract, claims and examples).

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Agouridas does not teach the method of preventing arterial thrombotic associated with atherosclerosis in warm-blooded animals.

Agouridas (US Pat. 5,747,467) discloses the ketolide compounds and its derivatives and their use as pharmaceutical drugs for combatting infections in warm-blooded animals, including humans. Agouridas discloses the compounds may be administered orally, rectally, parenterally or topically to the skin or mucous membranes, preferably orally and he also teaches the usual daily dose depends on the condition treated, the specific compound and the method of administration (See column 5, lines 26-43, and claim 11).

Agouridas does not teach the method of treating for arterial thrombotic specifically.

Shore et al. teaches a method for treating arterial chlamydial granuloma by the use of the anti-*Chlamydia pneumoniae* agents and a granuloma inhibitor. Representative anti-*C. pneumoniae* agents for this purpose include tetracycline and erythromycin compounds (See column 2, line 67-column 3, line 10). Shore et al also discloses a method for inhibiting the granulomatous process by the use of the erythromycin compounds(See column 8, lines 52-68), and explains the atherosclerosis (See column 7, lines 22-44). Shore et al. teaches the effective dose for the treatment purposes for different conditions and needs of patients(See examples 5-7).

Therefore, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to combine the compositions of Augouridas with the method of Agouridas and Shore et al. Agouridas states " the method of combatting

bacterial infections in warm-blooded animals, including humons, comprises administering to warm-blooded animals an antibactericidally effective amount of at least one compound of the erythromycin and their non-toxic, pharmaceutically acceptable acid addition salts".(See column 5, lines 33-38) and Shore states" therapeutic compositions of erythromycin is used for treatment of arterial chlamydial granuloma".

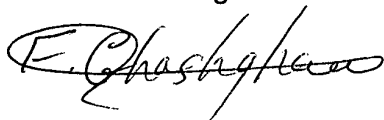
Therefore, an ordinary practitioner would have been motivated and had a reasonable expectation of success to use the erythromycin compositions to treat the arteial thrombotic complications to increase the effectiveness of the treatment process in human patients.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fariba Ghashghaee whose telephone number is (703)305-3586. The examiner can normally be reached on 8:30 A.M.-4:30 P.M. on Mon.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on (703)308-1152. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3014 for regular communications and (703)305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0196.

Fariba Ghashghaee



July 2, 2001.



JEFFREY FREDMAN  
PRIMARY EXAMINER

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